

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 26TH DAY OF MAY 1998

BEFORE :

THE HON'BLE MR.JUSTICE G.PATRI BASAVANA GOUD

H.R.R.P. No.725/1993

Between :

1. Smt.Saraswathamma,
major in age,
W/o late Sakaiah Setty,
2. Sri.B.S.Aswathanarayana
Setty, major in age,
S/o Sakaiah Setty,
3. B.S.Sathyanarayana Setty,
major in age,
S/o late Sakaiah Setty,

Petitioners 1 to 3 are residents
of premises Bearing No.23/L B,
Gangadhara Chetty Road,
Shivanachetty Hardens,
Bangalore-42.

4. B.S.Venkatachalapathi
Setty, major in age,
S/o late Sakaiah Setty,
No.97, Old No.2/1,
Venkateswara Provision
Stores, Brigade Road,
Bangalore-25.
5. B.S.Krishnamurthy Setty,
major in age,
S/o late Sakaiah Setty,
No.114, Langford Road,
Shanthinagar,
Bangalore-27.

.. Petitioners

(By Sri.C.V.Nagesh, Advocate)

And :

Sri.B.S.Karunakara Rao,
major in age,
S/o B.Subbaiah,
No.56, Langford Road,
Shanthinagar,
Bangalore-27.

.. Respondents

(By Sri.Ramaswamy Iyengar, Advocate)

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This H.R.R.P. is filed under Section 50/1 of the Karnataka Rent Control Act, against the order dated 24.4.1993 passed in H.R.C.No.2870/86 on the file of the III Addl.Small Causes Judge, Bangalore City SCCH.8) allowing the petition filed under Section 21(1)(h) of KRC Act.

This H.R.R.P. coming on for hearing and having beens reserved for orders, the Court this day made the following :

O R D E R

This is a revision petition under Section 50(1) of the Karnataka Rent Control Act, 1961 ('Act' for short). It is a tenants' revision petition. Sri Sakaiah Chetty, since deceased, by his legal representatives, namely, the widow and the sons, had been the tenant in a shop premises bearing No.97 (Old No.63/64) situated at Brigade Road, Bangalore, running a grocery shop therein. Respondent herein sought recovery of possession of the said premises in HRC No.2870 of 1986 before the learned Small Cause Judge, Bangalore, on the grounds specified under Clause (h) of the proviso to sub-section (1) of Section 21 of the Act, contending that he required the premises for his personal occupation for starting his own business. Tenant resisted the claim first disputing the existence of the relationship of landlord and tenant, and then contending that the petitioner before the trial court did not require the premises for his personal occupation, that because the enhanced rent demanded was not paid, recourse had been taken to filing of an eviction petition.



2. Learned Small Cause Judge, by the order dated 24-4-1993 impugned herein, held that there existed the relationship of landlord and tenant between the parties. Learned Small Cause Judge held that the landlord required the premises reasonably and bona fide for his personal occupation for starting his business. Learned Small Cause Judge also held in favour of the landlord on the aspect of comparative hardship. Learned Small Cause Judge found that the partial eviction was not feasible. Consequently, he allowed the eviction petition granting five months time to vacate. Hence this revision petition.

3. One of the sons of the deceased, the original tenant, came to be examined as RW-1 Venkatachalapathy. He admitted that the rent was being paid earlier to Rajgopal and then to the present landlord. Even then, he questioned the status of the landlord. Landlord examined as PW-1 referred to the Will left behind by the said Rajgopal as per its certified copy at Exhibit P-1, the death certificate at Exhibit P-2 which showed that Rajgopal died on 4-2-1984, and also the change of Khatha in the name of

the landlord as at Exhibit P-3, and the tax paid receipt evidencing payment of tax by the landlord as at Exhibit P-4. It is true there is a suit in OS No.10840 of 1985 filed by one Vemala N. Prasanthkumar in the City Civil Court, Bangalore, concerning the properties left behind Rajgopal. But, as admitted by RW-1 Venkatachalapathy, even after the death of Rajgopal, rent was continued to be paid to the present landlord. It was further admitted by him that there was no direction in the said suit that the rent should not be paid to the landlord in respect of the premises concerned. In the circumstances, on the basis of the Will, the Khatha having been changed in the name of the landlord and the landlord having paid tax in respect of the said premises after the death of Rajgopal, and, in the light of the admitted position that the tenant himself went on paying rent first to Rajgopal and then to the landlord, learned Small Cause Judge has rightly held that there existed the relationship of landlord and tenant between the parties.

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4. Landlord required the premises to do the business in books, cassettes and stationery and also to have a circulating library of books and cassettes. He had been working in MICO and he took voluntary retirement. Exhibits P-5 and P-6, apart from showing that he took voluntary retirement, also showed that he got a lump sum of Rs.75,000/- in addition to being eligible for monthly payment of Rs.500/- for the first 12 months and Rs.250/- for the next 12 months. Learned counsel for the tenant made much of the admission on the part of the landlord with regard to family establishment being run in the portion where there is a rolling shutter in the house of the landlord as evidenced by the photographs at Exhibits R-4 to R-6. It is shown therein that a Photo-Frame shop is being run by him. Landlord has stated that his daughter is using the said premises. Even this was started only two months prior to the evidence of the landlord. It is a part of the residential premises which is two furlongs away from the premises concerned herein. Premises herein concerned is in a busy commercial locality. Landlord's daughter opening of a

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Photo-Frame shop in a portion of the residential premises of the landlord cannot be held against the landlord when the landlord pleads that he required the premises concerned herein, which is in a commercial locality, for starting a business in books, cassettes, stationery and a circulating library of books and cassettes. Requirement of the landlord, therefore, cannot be called unreasonable. Tenant alleged that enhanced rent was being demanded. Rent for the premises was Rs.255/- per month. No consistent case had been made out with regard to demand for enhanced rent. At one stage, it was stated that the enhanced rent demanded was Rs.375/- per month and at another, it was referred as Rs.600/- per month with an advance of Rs.50,000/-. In the face of this inconsistency and in the absence of any other material in support of the allegation that the enhanced rent was demanded, the said contention of the tenant must be held not have been substantiated. No mala fides could, therefore, be attributed to the landlord. Conclusion of the learned Small Cause Judge that the landlord requires the premises reasonably and bona fide for his personal occupation, therefore, cannot

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be found fault with.

5. Landlord, after having taken voluntary retirement from MICO, intends to start his own business, the nature of business being in conformity with his age. Premises concerned is just two furlongs from his residential premises. One of the LRs of the tenant - RW-1 Venkatachalapathy, who is now running a grocery business in the premises concerned, admittedly owns two residential houses. He does not even know what the landlord is doing now. As admitted by RW-1 Venkatachalapathy in the course of his cross examination, new buildings are coming up in Brigade Road. What he says[^] that it requires huge advance and rent. Alternative accommodation for the business of RW-1 Venkatachalapathy thus being available in the very locality, the fact that he has to part with higher rent and more advance to secure such alternative accommodation, cannot be held against the landlord who is already 60 years old and who has taken voluntary retirement, and, other than the premises concerned herein, he is not shown to be owning any other premises

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in the commercial locality. On the aspect of comparative hardship, therefore, the learned Small Cause Judge has rightly held in favour of the landlord. Eviction petition was filed in the year 1986. Eviction order came to be passed by the learned Small Cause Judge in 1993. We are now in the year 1998. If six months more time from today is granted to the tenant to vacate, alternative accommodation certainly could be secured by him.

6. It is submitted at the Bar that admittedly the premises concerned herein measures 15' x 17'. Having regard to the nature of the shop premises concerned herein, as rightly found by the Small Cause Judge, it would not be feasible for the landlord to carry on his business in books, cassettes, circulating library in books and cassettes, etc. in the premises concerned, while at the same time RW-1 Venkatachalapathy does his grocery business in a part of it. Partial eviction, in the circumstances, is rightly held to be not feasible.

7. There is no merit in the revision petition, and the same is dismissed with the tenants being granted six months time from today to vacate the premises concerned

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and to deliver vacant possession of the same to the landlord, subject to each of five LRs of the deceased (petitioners herein) filing affidavits in this Court within one month from today, undertaking to deliver vacant possession of the premises to the landlord (respondent herein) at the end of six months period, and, in the meantime, not to induct any third party in the said premises.

Sd/-
JUDGE